

AKERMAN SENTERFITT LLP

335 Madison Avenue, Suite 2600
New York, New York 10017
Telephone: (212) 880-3800
Facsimile: (212) 880-8965
Lansing R. Palmer, Esq. (LP 4719)
Email: lansing.palmer@akerman.com

-and-

AKERMAN SENTERFITT

SunTrust Financial Centre, Suite 1700
Tampa, Florida 33602
Telephone: (813) 223-7333
Facsimile: (813) 223-2837
Edmund S. Whitson, III, Esq.
Email: edmund.whitson@akerman.com

Attorneys for Oetiker, Inc.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:	:	Chapter 11
	:	
DELPHI CORPORATION, et al.,	:	Case No. 05-44481 (RDD)
	:	
Debtors.	:	(Jointly Administered)
	:	
-----X	:	

**RESPONSE OF OETIKER, INC. TO DEBTORS' FIFTH OMNIBUS OBJECTION
(SUBSTANTIVE) PURSUANT TO 11 U.S.C. § 502(b) AND FED. R. BANKR. P. 3007
TO CERTAIN (A) CLAIMS WITH INSUFFICIENT DOCUMENTATION
AND (B) CLAIMS NOT REFLECTED ON DEBTORS' BOOKS AND RECORDS**

OETIKER, INC. ("Oetiker"), by undersigned counsel, as and for its response to "Debtors'
Fifth Omnibus Objection (Substantive) Pursuant to 11 U.S.C. § 502(b) and Fed. R. Bankr. P.
3007 to Certain (A) Claims With Insufficient Documentation and (B) Claims Not Reflected on

Debtors' Books and Records" [Docket No. 6100] (the "Objection to Claim") respectfully represents as follows:

1. On October 28, 2005, Oetiker timely filed its proof of claim in the amount of \$12,643.20 for goods sold to Delphi corporation and/or Delphi Electronic & Safety, now designated as Claim No. 722 (the "Oetiker Claim"). A copy of the Oetiker Claim, with Exhibits, is annexed hereto as Exhibit A and made a part hereof.

2. Oetiker attached invoices to the Oetiker Claim evidencing the dates and amounts owed by the Debtor for goods sold. Despite that documentation, the Debtors have objected to the Oetiker Claim as a "Books and Records" claim.

3. The Oetiker Claim should not be expunged because the Debtors owe Oetiker the amount of \$12,643.20 for goods sold and delivered to the Debtors for which they have not paid.

4. The Objection to Claim merely sets forth unsubstantiated, conclusory and open-ended objections which are inadequate to overcome the presumptive validity of the Oetiker Claim. See, e.g., Objection to Claim ¶ 27. Accordingly, the Objection to Claim fails to present the "sufficient evidence" necessary to meet the Debtors' burden of proof in negating the *prima facie* validity of the Oetiker Claim. Thus, the Objection to Claim must be overruled in its entirety.

5. The Oetiker Claim constitutes *prima facie* evidence of the validity, amount and legal basis of the Claim against the Debtors, because it is verified and substantiated with factual evidence. See Fed. R. Bankr. Proc. 3001(f); Gardner v. N.J., 329 U.S. 565, 573, 67 S.Ct. 467, 471 (1947) ("A proof of claim is, of course, *prima facie* evidence of its validity"); In re Kahn, 114 B.R. 40, 44 (Bankr. S.D.N.Y. 1990) ("[A] properly filed proof of claim is deemed allowed unless a party in interest objects. This provision is a codification of the well-settled practice, as

expressed by Mr. Justice Holmes of 'treating a sworn proof of claim as some evidence, even when it is denied") (quoting Whitney v. Dresser, 200 U.S. 532, 536 26 S. Ct. 316, 317 (1906)).

6. The Debtors bear the initial burden of producing "sufficient evidence" to rebut the *prima facie* validity of the Proof of Claim, which the Debtors in this case have filed to meet. In re King, 305 B.R. 152, 162 (Bankr. S.D.N.Y. 2004) ("It is well settled that the party objecting to a proof of claim has the burden of coming forward with *sufficient evidence* rebutting the validity of a properly filed proof of claim") (emphasis in original). To meet this burden of proof, courts in this Circuit and elsewhere require the objecting party to produce evidence at least equal in force to the *prima facie* case, which if believed "would refute at least one of the allegations that is essential to the claim's legal sufficiency." In re King, 305 B.R. at 164 (referring to In re Allegheny Int'l Inc., 954 F.2d 167, 174 (3d. Cir. 1992)); Sherman v. Novak (In re Reilly), 245 B.R. 768, 773 (2d Cir. B.A.P. 2000), aff'd 242 F.3d 362 (2d Cir. 2000); Carey v. Ernst, 333 B.R. 666, 672 (Bankr. S.D.N.Y. 2005).

7. The Objection to Claim fails to set forth any factual evidence to refute any of the allegations contained in the Oetiker Claim. A debtor cannot satisfy its burden of proof merely by objecting to the amount of classification of a claim without producing evidence to support its assertions. In re Woodmere Investors Ltd. P'ship, 178 B.R. 346, 354-55 (Bankr. S.D.N.Y. 1995) (debtor's mere assertions deemed insufficient as evidence to refute creditor's *prima facie* evidence of claim).

8. The Oetiker Claim is allowable in the full, noncontingent, liquidated amount claimed of \$12,643.20.

9. The Debtors may return any reply to Oetiker, in care of the undersigned counsel.

WHEREFORE, Oetiker respectfully requests that the Court enter an Order overruling the Debtors' Objection to Claim, with prejudice and without costs, or alternatively granting a hearing on the Objection to Claim, together with such other and further relief as is equitable and just.

DATED this 3rd day of January, 2007

/s/ Lansing R. Palmer

Lansing R. Palmer, Esq. (LP 4719)

AKERMAN SENTERFITT LLP

335 Madison Avenue, Suite 2600

New York, New York 10017

Telephone: (212) 880-3800

Facsimile: (212) 880-8965

Email: lansing.palmer@akerman.com

-and-

Edmund S. Whitson, III, Esq.

AKERMAN SENTERFITT

SunTrust Financial Centre, Suite 1700

401 E. Jackson Street

Tampa, Florida (33602)

Post Office Box 3273 (33601-3273)

Phone: (813) 223-7333

Fax: (813) 223-2837

Email: edmund.whitson@akerman.com

Attorneys for Oetiker, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on January 3, 2007, I electronically filed the foregoing with the Clerk of the Bankruptcy Court using the CM/ECF system which sent notification of such filing to all parties receiving electronic means.

I further certify that on January 3, 2007, the foregoing was served by overnight delivery to the following:

Delphi Corporation
5725 Delphi Drive
Troy, Michigan 48098
Att'n: General Counsel

-and-

Skadden, Arps, Slate, Meagher & Glom LLP
333 West Wacker Drive, Suite 2100
Chicago, Illinois 60606
Att'n: John Wm. Butler, Jr.
John K. Lyons
Randall G. Reese

/s/ Lansing R. Palmer
Attorneys for Oetiker, Inc.